



**IN THE CAYMAN ISLANDS COURT OF APPEAL ON  
APPEAL FROM THE GRAND COURT OF THE  
CAYMAN ISLANDS CRIMINAL DIVISION**

**CICA (Crim) APPEAL No. 1 of 2019  
IND. No. 0100 of 2017  
SC No. 5877 of 2017**

**BETWEEN:**

**DAVID KARL LOBO**

**APPELLANT**

**-and-**

**HIS MAJESTY THE KING**

**RESPONDENT**

**Before:**

**The Rt Hon Sir John Goldring, President  
The Hon Sir Richard Field, Justice of Appeal  
The Rt Hon Sir Michael Birt, Justice of Appeal**

**Appearances:**

**Mr. Simon Csoka KC instructed by Ms Kathleen Ryan for the  
Appellant  
Mr. Scott Wainwright of the Office of the DPP for Respondent**

**Date of Hearing:**

**19 April 2024**

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**JUDGMENT**

**Transcript of oral judgment dated 25 April 2024 Approved for Release 31 May 2024**

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**Goldring, JA (President)**

1. After a trial before the Honourable Madam Justice Dobbs and a jury, the Applicant, a man of

previous good character and a customs official in the Cayman Islands, was convicted of one count of being knowingly concerned between 1 May 2017 and 3 June 2017 in the importation of 1.814 kilograms of cocaine. That was count 2 on the indictment. There were co-defendants on that count; namely, Alan Dominguez, Lesme Ruiz, Jose Ferrini and Yoandry Molina. The Applicant was acquitted of count 1, a count of conspiracy to import a controlled drug on an earlier occasion, the drug in question also being cocaine. The Applicant's co-defendants had pleaded guilty to both counts. Two of them, Lesme Ruiz and Alan Dominguez, gave evidence against the Applicant.

2. The Applicant was sentenced to 16 years' imprisonment. The judge took the view that his was a leading role. Lesme Ruiz was sentenced to 5 years' imprisonment concurrent on the two counts in respect of which he had pleaded guilty, Alan Dominguez to 4 years' imprisonment concurrent and Jose Ferrini and Yoandry Molina, who were the couriers in the importation, to 6 years' imprisonment.
3. At the heart of the Applicant's application for leave to appeal against conviction was an affidavit bearing the date 24 June 2020 and apparently sworn by Lesme Ruiz a few days later in which, in broad terms, he stated his evidence implicating the Applicant was false and was given following promises by prosecution counsel Mr. Moran, in the presence of his attorney, Mr. Davies, that he would receive a substantially-reduced sentence for doing so. We refer to some parts of that affidavit.

"I would like to make this statement known to the court and all parties thereto that the co-accused known to me as David Karl Lobo was never involved in the transaction as per my previous statement given in court against Mr. Lobo.

In 2018 I made a sworn declaration where I made it known to the prosecution that Mr. Lobo had nothing to do with the drugs. The reasons to why I testified against Mr. Lobo was because as a result of that sworn declaration sometime in September 2018 Patrick Moran, now Director of Public Prosecutions, visited me at Northward Prison and through my lawyer, Alex Davies, told me that if I continued with that declaration that I would be punished with the full weight of the law and I would receive an 18 years' prison

sentence. Mr. Moran offered if I testified against Mr. Lobo he would arrange for me to receive a discount on my present sentence between 66 and 75 percent. On another occasion, I was taken to a building. I do not know if it was the office of the prosecutor or an office of the court located outside of the main court building where, along with my lawyer, we met Mr. Moran and once again he offered me the same deal. To me this was reason enough to have implicated the accused, David Karl Lobo, and in no doubt was part of my strategy to receive a lesser sentence.

I also used everything that I knew about the case to make my statement more credible in court to aid Patrick Moran with what he wished and to serve my own interests. I became a Crown witness and falsely testified against Mr. Lobo.

I have now completed my sentence at Northward Prison and by now I am far away from the Cayman Islands. For these reasons I now make the statement because a grave injustice was done to an innocent man based on my testimony. David Karl Lobo absolutely did not have any part in the operation to import cocaine into the Cayman Islands, nor had any prior knowledge as to what was planned and executed by myself. The only business arrangement which I had with David Karl Lobo involved the possible sale of three pre-Colombian gold statues. David Karl Lobo only extended his courtesy to me without knowledge of the illicit activity which I had planned".

4. The affidavit is purportedly signed on the 29 June 2020, purportedly witnessed by Catherine Gomez, Justice of the Peace, whom, we were told, was a chaplain at the prison. Assuming that he was in the prison at that date, there is no obvious explanation as to the sentence beginning:

"I have now completed my sentence at Northward Prison and by now I'm far away from the Cayman Islands".

5. The Applicant sought before us to call Mr. Ruiz in support of his appeal. For reasons which now follow, we refused that application on the basis that any account by Mr. Ruiz seeking to exculpate the Applicant was incapable of belief and that it was, in the circumstances, not in the interests of justice to admit it: see section 16 of the Court of Appeal Act (2023 Revision). We understand

that had Mr. Ruiz's evidence been admitted, he would have given his account from outside the Cayman Islands; namely, from a location in South America.

### **The Crown's case against the Applicant**

6. The South American side of the undoubted importation was run by man called "Noriega". The cocaine was converted into liquid form. It was put into condoms which Messrs. Ferrini and Molina swallowed and smuggled into the Cayman Islands. Once the importation had taken place the condoms containing the cocaine were expelled with the aid of castor oil. The liquid cocaine was cooked and converted back into powder.
7. Messrs. Ruiz, Molina and Ferrini arrived in the Cayman Islands on 31 May 2017. The Applicant had booked an apartment for them on Seven Mile Beach. The Applicant met them on the day of their arrival. He thereafter visited the apartment and brought necessary supplies, including scales and laxatives.
8. On the evening of 2 June 2017, the police raided the apartment. The cooking and conversion of the liquid cocaine had taken place. Messrs. Ruiz, Ferrini and Molina were arrested. So too was Alan Dominguez's wife who had been brought by the Applicant to the apartment. Mr. Dominguez was in the Bahamas but returned to Cayman. The cocaine was seized. What was found there was photographed. In addition to a large amount of cocaine, there were all the accoutrements for drug dealing and the conversion of the cocaine of the liquid cocaine into powder.
9. Having dropped off Mrs. Dominguez outside the apartment, the Applicant was arrested shortly afterwards in South Sound in his car. He had approximately US\$13,000 in cash. Receipts for wire transfers made by him to Colombia were found. His phone was seized. It contained incriminating evidence.
10. There was evidence of regular communication between the Applicant and one or more of the co-defendants. The court has been provided with the detail of the contact. We shall only refer to it to a limited extent.

11. On 1 June the Applicant asked Mr. Ruiz how everything was going. Later, Mr. Ruiz asked the Applicant to bring the scales. The Applicant responded that "Al" (Dominguez) had them. "He has everything." There was further communication between Mr. Ruiz and the Applicant in which again the Applicant asked how everything was going and was told "everything is good". He replied, "perfect".
12. At lunch time on 2 June Mr. Ruiz informed the Applicant by text that he "has those little things over here".
13. In the early evening the Applicant informed Mr. Ruiz he was arriving with, as he put it, "Al Dominguez's lady".
14. Detailed examination of the Applicant's phone revealed further incriminating evidence. There was communication between the Applicant and Noriega concerning, as the Crown suggested, drugs. There were deleted images of tightly-wrapped images with a shark depicted on them. The communications with Noriega referred to a shark. In addition to the wrapped packages, one of the images revealed a knife and blade, and a weighing scale.

#### **The co-defendants' evidence**

15. In her summing up (at 10/22), the judge dealt with the evidence of the co-defendants in the following way:

"Let me turn now to the evidence of co-conspirators. You have heard evidence from Lesme Perez Ruiz and Alan Taylor Dominguez; two of the admitted conspirators in this case. They have pleaded guilty to both counts and given evidence on behalf of the Crown. They both implicate this defendant in the two offences on the indictment. They haven't yet been sentenced for their part in the importations. Now I need to give you a strong warning. You must examine their evidence with particular care because in saying what they did, they may have a motive for playing down their roles and also have a hope that giving evidence will result in a lower sentence; thus, they have an interest to protect

their position and that is what precisely what the defence suggest. This is why you need to look at their evidence very carefully and treat it with caution. So when considering their evidence, you would be wise to look to see if there is any other independent evidence which supports their evidence before you place reliance on it".

### **Mr. Ruiz's evidence**

16. He implicated the Applicant in the count 1 conspiracy. We need not go into the detail of that.
17. As to count 2, he spoke, among other things, of the Applicant bringing scales to the apartment, visiting the apartment during the slow cooking of the cocaine, making a down payment of \$12,000 to buy the cocaine, coming to the apartment at a time when the drugs were almost processed and coming again when they had been and were in plastic containers.
18. He was examined at length about different accounts he had given. He admitted that he had previously lied. He said he pleaded guilty and then changed his plea and his account in order to provide himself with a defence. He said he did that because the Applicant had approached him in prison and told him "not to worry, that he was going to help. He should stand firm and say the only business the two of them had was statues".
19. Mr. Ruiz said that when he saw the papers he saw the strength of the case against him. The Applicant's promised help never materialised.

### **Mr Dominguez's evidence**

20. Alan Dominguez's evidence was that he knew the Applicant from the gym. He put the Applicant in touch with Mr. Ruiz. He was not able to provide any description of the events at the apartment.

### **The Applicant's accounts in interview and at trial**

21. The Applicant denied any involvement or knowledge about the drugs. He spoke of discussing

business ventures concerning gold artifacts or statues which Mr. Ruiz was importing from Colombia into Cayman. He said he saw those artifacts. He said he bought various items such as the scales when asked without thinking they were connected to drugs. He believed they were to weigh the artifacts. As to the images on his phone, he said they depicted drug seizures in his role as a customs officer.

22. In evidence, he effectively repeated that. He said that he believed that the castor oil was to polish statues. He went to the apartment, he said, believing they were cleaning statues. He saw nothing on the stove. The scales were to weigh statues. He said he saw them at one point. The cash found in his car was a loan to buy a car for his fiancée. He said he never spoke to Mr. Ruiz in prison.

### **Mr. Ruiz's credibility**

23. There is a great deal of evidence suggesting that Mr. Ruiz's evidence seeking to exculpate the applicant is incapable of belief. Counsel, Mr. Wainwright, counsel for the Respondent, summarised some of it for the court. We can take it briefly.
24. As we have observed, firstly, there is no evidence as to how the affidavit came into being. There is no statement from the person said to have witnessed it. Ostensibly it was signed on 29 June 2020 at a time when Mr Ruiz was apparently still serving his sentence. Inexplicably, it was only delivered to the Director of Public Prosecutions on 9 April 2021. We observe that we do not know that if by 9 April 2021 Mr. Ruiz had been released and had left the Cayman Islands. We have already referred to the contents of the penultimate paragraph.
25. Secondly, the day after Mr. Ruiz was arrested, he implicated the Applicant. Mr. Moran could not then have induced him to do so.
26. Thirdly, there is cogent evidence of the truth of Mr. Ruiz's evidence. There are the WhatsApp messages, the content of which tie in closely with the external evidence. Mr. Ruiz gave a detailed account of events consistent with it. As Mr. Wainwright demonstrated, it is inconceivable that such detailed evidence consistent with the other evidence could have been the product of

invention. We cannot accept, as Mr. Csoka on behalf of the Applicant submitted, that Mr. Ruiz may have learnt such detail from the papers.

27. Fourthly, it is quite clear that Mr. Ruiz lied in the affidavit. His account regarding Mr. Moran was plainly untrue. So too was his account involving Mr. Davies. As Mr Davies made clear, Mr. Ruiz had persistently told him of the Applicant's involvement. He had signed a document to that effect.
28. In the result, we have concluded that Mr. Ruiz is a witness who self-evidently is wholly without credibility when he seeks to exculpate the Applicant. The affidavit, replete as it is with lies, is a spurious means of seeking to do so. Nothing said by Mr. Ruiz could conceivably affect the safety of the Applicant's conviction. It was not therefore in the interests of justice to admit Mr. Ruiz's evidence.
29. The consequence of the refusal to admit the evidence means, as Mr. Csoka effectively conceded, that no basis remained to impugn the conviction. He could not properly question the evidence of Mr. Moran and Mr. Davies. Moreover, although, sensibly, Mr. Csoka did not seek to do so, he cannot rely on what in any event were wholly speculative points in his skeleton argument to the effect that the police may improperly have induced Mr. Ruiz falsely to blame the applicant or Mr. Ruiz's statement may have been pre-prepared. Neither proposition can stand up to scrutiny in the light of Mr. Davies' evidence.
30. In the result, we have no doubt that this conviction is safe. It was based on compelling evidence. As Ms. Fosuhene, former counsel to the Applicant, in effect observes in her statement, the Applicant was in and out of premises at a time when cocaine was being cooked and ultimately packaged in blocks for sale. We would add that it may well be that the Applicant's acquittal on count 1 is explicable by the lesser amount of supporting evidence, something which the judge indicated to the jury they should seek.
31. Accordingly, for the reasons we have given, we refuse this application for leave to appeal.